

1 **BEFORE THE SHORELINES HEARINGS BOARD**
2 **STATE OF WASHINGTON**

3 **CHARLES R. WILSON,**)
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1 witnesses, cross examination and Board questions, and reviewed briefs submitted by the
2 parties, the Board makes these:

3 FINDINGS OF FACT

4 I

5 Charles R. Wilson owns approximately 10 acres of property 3 miles south of Littlerock
6 at 15941 Littlerock Road, on the Black River, a shoreline of the state.

7 II

8 The property was in agricultural use up until the 1930s. Since then, and prior to
9 Mr. Wilson's purchase in 1976, it was allowed to revert essentially to its natural state. The
10 property floods regularly, at least once a year.

11 Agricultural uses in place on the property before county regulation include: (a) a large
12 dairy farm, dwellings and outbuilding, (b) specifically, the access road to the Black River, and
13 (c) specifically, a pond adjacent to the road for domestic waterfowl.

14 III

15 The Thurston County Shoreline Master Program designates that stretch of land along
16 the Black River as a Natural Environment, as shown on maps as S22-T16N-R3W.

17 IV

18 The Federal Emergency Management Agency's Flood Insurance Rate map of
19 December 1, 1982 also designates this stretch along the Black River as in the 100-year flood
20 boundary.

21 V

22 Charles Wilson is a self-employed installer of septic tank systems, with some 22 years
23 experience using heavy equipment. He acquired the property about 1976, and built a garage
24 which became the Wilson home over time. He obtained a building permit, septic tank permits
25

1 and installed two septic tanks and a drainfield. He met with the county sanitarian in regard to
2 that project. He built the home structure, one foot higher than had been recommended by the
3 Department of Ecology.
4

5 VI

6 In 1986, Mr. Wilson suffered a heart attack and was hospitalized. This gave him an
7 opportunity to watch some films on dieting and he learned that wild rice is a very healthy
8 food. He also learned that wild rice is expensive, and he determined to use his farm to raise
9 wild rice for himself, and for sale, having heard about the raising of rice back in Minnesota,
10 and also in the Palouse country.

11 VII

12 He said the rice would be harvested by boat, like the Indians do it by bending the rice,
13 shaking the grain, without using mechanical means, nor using any chemicals, pesticides or
14 fertilizers. He intended to develop 5 acres of rice, and would not know if it would be
15 marketable. He was aware it would require much water, and it would also oxygenate the
16 water, which would be helpful to fish.

17 Unlike Asian rice, the wild rice of North America is a plant which thrives in cold, clear
18 water without chemical additives, and which tolerates a narrow range of seasonal water level
19 fluctuations. American wild rice is being cultivated in the Pacific Northwest, commercially;
20 however, Mr. Wilson does not know of anyone growing it in western Washington. In relation
21 to the Black River ecosystem, wild rice paddies, at times of high water, will be a wildlife
22 attraction with no adverse side effects. More significantly to the case, it will be one more
23 phase of the old agricultural use of the property. The old duck pond sets the precedent here.
24 The Wilson property has not been farmed since the 1930s.

VIII

He was told verbally by the Department of Ecology that he could take 5,000 gallons a day out of the river to irrigate. This was contested by Mr. Jim Fraser, biologist from the Fisheries Department. Mr. Wilson is not sure how much it would take to flood five acres year around, but said he would rely also on rain, flooding of the lower area, and pumping water from the river. He also said there are springs on the property.

IX

Approximately 2 acres of land has been cleared, and the edge of one reservoir or pond is within 200 feet of the river. Seven reservoir-ponds have been dug, and the soil spread along side the ponds. They are from six to eight feet in depth.

X

Thurston County adopted its Shoreline Master Program in 1975. Natural Environment designations are the most restrictive in terms of human intrusion. The agricultural use permitted is for livestock grazing if it is not harmful to streams. Dredging, landfilling and clearing vegetation, except for access to structures, are prohibited in the Natural Environment.

XI

Thurston County handles calls of inquiry regarding land use by telephone, and requests persons to come to the office to see maps or photos that may be helpful in identifying properties or regulations.

XII

The Thurston County officials received complaints that Mr. Wilson was excavating, clearing vegetation, digging ponds and filling, all possibly in violation of the Shoreline Master Program. He had not applied for a permit, exemption, or variance.

1
2 XIII

3 Thurston County does have a booklet to provide information regarding shorelines
4 regulations. It was not clear when it was published, nor was it provided to Mr. Wilson when
5 representatives of the county visited the site in May of 1991. County inspectors could not see
6 any violation on this visit.

7 XIV

8 In March, 1992, there was another complaint indicating that there was clearing of
9 vegetation, new ponds, new rock. Planning technician David Hurn on March 5, 1992, posted
10 a stop work order, citing construction of a road in the Natural Environment.

11 XV

12 On April 7, 1992, Mr. Hurn wrote to Mr. Wilson about the posting of the property
13 with a "Stop Work" Order on March 5, 1992, after receiving a complaint about possible filling
14 of a wetland for construction of a road. Mr. Hurn's review revealed what he called apparent
15 violations:

16 "1. Filling of a wetland which is a violation(sic) the Thurston County Zoning
17 Ordinance Chapter 20.36.040.

18 "2. Construction of a road in the Natural Environment which is a violation of
19 the Shoreline Master Program Chapter VII A.

20 "Also after researching your case, I cannot find any records of building permits
21 for a Single Family Residence or a BSA. Which may be violations of Section
22 301 Chapter 3 of the Uniform Building Code and Article 4 of the Thurston
23 County Sanitary Code."

24 XVI

25 On April 16, 1992, Mr. Wilson's response to Mr. Hurn was received at the Thurston
26 Regional Planning Council, indicating he felt that it was a personal vendetta against him, and

1 if Mr. Hurn continued to harrass Mr. Wilson and his wife, Mr. Wilson would seek personal
2 legal redress against Mr. Hurn.
3

4 XVII

5 On July 27, 1992, Mr. Hurn sent Mr. Wilson a letter in which he said . . . *"it has*
6 *become apparent that you intend to ignore the stop work order and continue to violate the*
7 *rules of the Shoreline Master Program and the Thurston County Zoning Ordinance. Therefore,*
8 *the Planning Department has no recourse but to turn this case over to the Prosecuting*
9 *Attorney's office for immediate action."* The letter set a deadline of August 6, 1992 for an
10 appeal.

11 XVIII

12 On August 6, 1992, Thurston County Regional Planning Council received
13 Mr. Wilson's reply that he did not intend to appeal. He requested the County to prosecute
14 him, and not contact him again by mail, except to be notified when the trial date had been set.

15 XIX

16 On September 17, 1992, Mr. Wilson wrote to the Thurston County Planning
17 Department, asking Mr. Hurn for written clarification as to *"which part or parts of my*
18 *property you say I can or cannot use, and which uses I can use and which I can't, and how*
19 *and when you plan on compensating me for loss of use. If you do not reply I will continue to*
20 *use all of my property as I see fit. Part of my property is for living, part is for business, part*
21 *is for agriculture."*

22 XX

23 No one from the Thurston County Planning Department responded to Mr. Wilson's
24 letter, nor contacted him.
25

1
2 XXI

3 On October 9, 1992, the county made an aerial surveillance of the property. On
4 November 17, 1992, the County and DOE issued a joint order and Notice of Penalty in the
5 amount of \$3,000. Wilson appealed the penalty. A pre-hearing conference was held
6 February 4, 1993, and the matter set for hearing.

7 XXII

8 Mr. Wilson did not prepare an "Application for Relief from Penalty", nor did he
9 prepare a plan for restoring the site, nor did he admit or deny the allegation of facts or law
10 contained in the DOE and County Order of Penalty.

11 XIII

12 The "Stop Work" order posted March 5, 1992, gave this reason for there being no
13 further work on the site or structure without prior approval:

14 *"Violation of the Shoreline Master Program, Construction of a road in the*
15 *Natural Environment."*

16 There was no clarification or reference to specific violations in law.

17 The September 16, 1992 "Correction Notice" was written on a Health Department
18 form, and said:

19 *I have this day inspected the sewage system on this property and have found the*
20 *following violations of County and/or State laws governing same:*

21 *Stop Work for violating the Shoreline Master Program Natural Environment and*
22 *the Environmental Sensitive Chapter of the Thurston County Zoning Ordinance*
Clearing and grading and filling in a wetland.

23 *You are hereby notified that no more work shall be covered on this property*
24 *until the above violations are corrected. When corrections have been made, call*
for re-inspection. DO NOT REMOVE THIS TAG.

1
2 It was signed by Dave (Hurn), inspector for Planning Department.

3 XIV

4 Any Conclusion of Law deemed to be a Finding of Fact is hereby adopted as such.

5 From these Findings of Fact, the Board issues these:

6 CONCLUSIONS OF LAW

7 I

8 The Shoreline Management Act requires that all development and uses undertaken on
9 the shorelines of the state be consistent with the provisions of the act, the regulations of the
10 Department of Ecology, and the applicable master program, in this case that of Thurston
11 County. RCW 90.58.140(1) and (2).

12 II

13 Local governments and the Department of Ecology are authorized to issue civil
14 penalties and regulatory orders to:

15 *Any person who shall fail to conform to the terms of a permit issued under this*
16 *chapter or who shall undertake development on the shorelines of the state*
without first obtaining any permit required under this chapter. . . .

17 RCW 90.58.210(2); chapter 173-17 Washington Administrative Code.

18 III

19 Development is defined under the Act as:

20
21 *a use consisting of the construction or exterior alteration of structures;*
22 *dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals;*
23 *bulkheading; driving of piling; placing of obstructions; or any project of a*
permanent or temporary nature which interferes with the normal public use of
the surface of the waters of the state . . . RCW 90.58.030(3)(d).
24
25
26

1 We conclude that Mr. Wilson did some dredging in the Black River and on the
2 wetlands placed the dredging and spread without either a hydraulics permit or a shoreline
3 permit.
4

5 IV

6 The removal of trees and other vegetation is prohibited in the Natural Environment
7 except for the absolute minimum required in constructing a residence. SMP Section 3,
8 Policies and regulations for Use Activities, XVI.D.5.e. We conclude that the appellant did
9 clear vegetation within the Natural Environment on his property. Some clearing was done in
10 the 200 foot shoreline area, and some in the adjacent wetlands of the floodplain.

11 V

12 The excavation of the pond reservoirs removed an estimated 552 cubic yards of dirt
13 which was not rebutted, but the excavated material was spread on the ground around the
14 ponds, which constitutes either dumping or landfill. It was not contended or proved that
15 material was hauled on or off the property.

16 VI

17 The allegation that there was construction of a road in natural environment was not
18 established, the roadway to the river having been in existence from previous ownerships.

19 VII

20 Utilization of soil or aquatic resources is also prohibited in the Natural Environment.
21 SMP Section 2, General Goals and Policies VII.A. We conclude that the appellant did utilize
22 soil and aquatic resources on his property, in preparation of the pond reservoirs, without
23 obtaining a development or shoreline permit, variance, or exemption.
24
25

VIII

The Docket No. 92-SH-262, the Order and Notice of Penalty incurred pursuant to the Shoreline Management Act, was for \$3,000, and "*shall be waived in full upon timely completion of all of the following terms and conditions set out below. . . .*"

We conclude that Mr. Wilson did not complete these conditions. Neither did the appellant file an "Application for Relief of Penalty" as outlined in the penalty order.

We conclude that from the earliest contacts of the county authorities with Mr. Wilson that he felt there was a "vendetta" to not provide him with information and to place roadblocks in any communication he would have with the officials. Just as some county officials felt Mr. Wilson was uncooperative, he in turn felt the county was unwilling to provide him with information, as was borne out when he was sent no answer to his September 17, 1992 letter requesting written clarification as to what he could do or use on his property. We conclude that communications between Mr. Hurn and Mr. Wilson were strained and grew more tense throughout this period.

IX

RCW 90.58.140 states that a substantial development shall not be undertaken on shorelines of the state without first obtaining a permit from the government entity having administrative jurisdiction under this chapter.

We conclude that Mr. Wilson did not obtain a permit because he thought one was not required when one was working on his own land, and because he did not consider raising wild rice as illegal as an agricultural pursuit.

Applying for an "after the fact" permit, a letter of exemption, a shoreline substantial development variance, or a conditional use permit all offer options that may be considered as requirements for not causing potential damage that restoring the property to its original

1
2 condition might bring. The appellant also may petition to ask his property be placed in a
3 Conservancy Environment, rather than Natural.

4 X

5 We conclude there has not been *irreparable* injury to the natural environment by the
6 excavation that has been done. No chemicals, pesticides, fertilizers or nutrients have been
7 used in work done. If left untouched, the pond areas will presumably eventually revert to their
8 natural state, due to the regular flooding of the property.

9 We conclude therefore that the first full paragraph that begins on page 5 of Order
10 No. 92-SH-262, Nov. 1992, is considered inoperative.

11 XI

12 Because the county failed to respond to Mr. Wilson's request of September 17, 1992,
13 for clarification about what he could do or not do on various parts of his property, we
14 conclude there is some basis for modifying the amount of the penalty.

15 XII

16 Any Finding of Fact deemed to be a Conclusion of Law is hereby adopted as such.

17 From the foregoing, the Board issues this:
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ORDER

Thurston County's and Ecology's Order and Notice of Penalty issued November 17, 1992, are AFFIRMED, except for the first full paragraph that begins on page 5 of Order No. 92-SH-262, Nov. 1992, which is considered inoperative. The penalty is reduced from \$3,000 to \$2,000, (Conclusion of Law XI).

DONE this 20th day of May, 1993.

SHORELINES HEARINGS BOARD

Harold S. Zimmerman
HAROLD S. ZIMMERMAN, Presiding

Robert V. Jensen
ROBERT V. JENSEN, Attorney Member

Bobbi Krebs-McMullen
BOBBI KREBS-McMULLEN, Member

Richard G. Gidley
RICHARD GIDLEY, Member

Dave Wolfenbarger
DAVE WOLFENBARGER, Member

S92-57F

MODIFIED FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER
SHB NO. 92-57 (12)